

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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In re:

Teri Ruta,

Chapter 13
Case No. 16-11036-1

Debtor.
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AFFIRMATION OF NON-COMPLIANCE

Tracy Schreiber-Banks, the undersigned, an attorney duly licensed to practice law in the Courts of the State of New York and admitted in the Northern District of New York, respectfully represents the following:

1. I am an associate of the law firm of Roach & Lin, P.C., attorneys of record for Wilmington Savings Fund Society, FSB as Trustee for Stanwich Mortgage Loan Trust A (hereinafter referred to as "Wilmington Savings"), a secured creditor of the Debtor, and as such, I am fully familiar with the facts and circumstances set forth within.

2. This Affirmation of Non-Compliance is submitted in connection with the default provision of the Conditional Order Vacating Automatic Stay (hereinafter "Conditional Order") which was signed by this Court on March 13, 2017, a copy of which is annexed hereto and made a part hereof as **Exhibit "A"**.

3. Pursuant to the terms of the Conditional Order, Debtor was required to pay the total sum of \$9,989.04 in 6 monthly installments of \$1,664.84 commencing March 15, 2017 and ending on August 15, 2017. This sum represented post-petition mortgage arrears covering July 2016 through and including February 2017 in the sum of \$9,563.04 and attorney's fees and costs in the sum of \$426.00 (the "Mortgage Arrears"). In addition to

paying the Mortgage Arrears, Debtor was also required to make his regular post-petition mortgage payments commencing March 2017 (“Post-Petition Payments”)...

4. Debtor failed to tender the sum of \$9,989.04 (the “Mortgage Arrears”) pursuant to the terms of the Conditional Order, nor did he pay his Post-Petition Mortgage Payments. Accordingly, a Notice of Default, annexed hereto as **Exhibit “B”**, was sent to the Debtor and Debtor’s Attorney on November 27, 2019. As of today’s date, December 20th, 2019, the Debtor has failed to cure the default.

5. By virtue of the foregoing, and in accordance with the default provision of the Conditional Order, Wilmington Savings respectfully requests that the automatic stay imposed by 11 U.S.C. §362(a) be vacated as to Wilmington Savings, its successors and/or assigns, and that Wilmington Savings, be granted leave to continue a proceeding to foreclose its mortgage in the Supreme Court of the State of New York, County of Warren, as against the real property commonly known and described as 15 Country Colony Road, Queensbury, New York 12804.

Dated: Syosset, New York
December 20, 2019

ROACH & LIN, P.C.

/s/Tracy Schreiber-Banks

By: Tracy Schreiber-Banks, Esq.
Attorneys for Secured Creditor
6901 Jericho Turnpike, Suite 240
Syosset, NY 11791
(516) 938-3100 Ext. 129

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 13

Case No. 16-11036-1

Teri Ruta,

EX PARTE ORDER VACATING STAY

Debtor.

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APPLICATION HAVING BEEN MADE to this Court by Wilmington Savings Fund Society FSB, as Trustee for Stanwich Mortgage Loan Trust A (hereinafter “Wilmington Savings”) pursuant to a Conditional Order Vacating Stay which was signed by the Court on March 13, 2017 and it appearing that the Debtor failed to comply with the terms of the Conditional Order Vacating the Automatic Stay; and it appearing that Wilmington Savings served a Ten (10) Day Notice of Default on the Debtor and Debtor’s Attorney and that after the expiration thereof, the default was not cured, and upon the Affirmation of Non-Compliance with Affidavit of Service filed in support of this Ex Parte Order Vacating Stay; and good and sufficient cause appearing therefore; it is

ORDERED, that the application of Wilmington Savings, to the extent it seeks an Order Vacating the Automatic Stay pursuant to 11 U.S.C. §362(d) (1) and (d)(2), is hereby granted as set forth below; and it is further

ORDERED, that the automatic stay imposed by 11 U.S.C. §362(a) is hereby vacated as to Wilmington Savings, its successors and/or assigns, with regard to the mortgage foreclosure action as against the subject real property described herein; and it is further

ORDERED, that Wilmington Savings, its successors and/or assigns, is hereby granted leave to continue a proceeding to foreclose its mortgage in the Supreme Court of the State of New York, County of Warren, as against the real property commonly known and described as 15 Country Colony Road, Queensbury, New York 12804 and it is further

ORDERED, that the relief granted shall remain unaffected by a subsequent conversion or consolidation of this case; and it is further

ORDERED, that the Chapter 13 Trustee and the Debtor shall receive notice of any surplus monies that may exist after the foreclosure sale.

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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In Re:

Teri L Ruta,

Debtor.

-----X

STATE OF NEW YORK)

ss.:

COUNTY OF NASSAU)

AFFIDAVIT OF SERVICE

Chapter 13

Case No.: 16-11036-1-rel

Alicia McNamee, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides in the State of New York.

That on December 23, 2019 deponent served the annexed **AFFIRMATION OF NON-COMPLIANCE AND EX PARTE ORDER** on the following parties at the addresses designated by them for that purpose, by depositing a true copy of same enclosed in a post-paid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

Teri L Ruta
15 Country Colony Rd.
Queensbury, NY 12804

Michael J Toomey, Esq.
1 Southwestern Plaza
PO Box 2144
Glens Falls, NY 12801

Sworn to before me on this
23RD day of December 2019


NOTARY PUBLIC


Alicia McNamee


MARY MARSH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MA6120260
Qualified in Nassau County
My Commission Expires December 20, 2020 

EXHIBIT A

So Ordered.

Signed this 13 day of March, 2017.



Robert E. Littlefield, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

-----X
IN RE:

Teri L. Ruta

DEBTOR.

CASE NO.: 16-11036-rel

Chapter: 13

JUDGE: ROBERT E. LITTLEFIELD, JR.
-----X

**ORDER CONDITIONALLY GRANTING RELIEF FROM
THE AUTOMATIC STAY**

Coming before the court on March 9, 2017 was the motion of Wilmington Savings Fund Society, FSB, As Trustee For Stanwich Mortgage Loan Trust A (the "Movant"), by its attorneys Rosicki, Rosicki & Associates, P.C. for Relief from the automatic stay (the "Motion"), and after due deliberation, it is hereby

ORDERED that the Motion of Movant is conditionally granted as set forth below, and it is further

A. ORDERED that on or before August 15, 2017, the Debtor shall pay Movant all post-petition arrears on his/her mortgage; such payments to include principal, interest, late charges, escrow advances and reasonable attorney fees in the amount of \$426.00 for a total sum of \$9,989.04; such sum shall be good through February 28, 2017 and said arrears are broken down as follows:

8 Late Payments (7/1/2016-2/1/2017) at \$1,195.38 each	= \$9,563.04
Reasonable attorney fees	= \$250.00
Reasonable attorney costs	= \$176.00
Total	= \$9,989.04,

and said arrears are to be paid as follows:

AMOUNT	DUE BY
\$1,664.84	3/15/2017
\$1,664.84	4/15/2017
\$1,664.84	5/15/2017
\$1,664.84	6/15/2017
\$1,664.84	7/15/2017
\$1,664.84	8/15/2017

and said payments shall be in the form of certified funds and mailed to:

Wilmington Savings Fund Society, FSB, As Trustee For Stanwich Mortgage Loan Trust A
P.O. Box 3730
Anaheim, CA 92806

and it is further,

B. ORDERED that the Debtor shall make timely regular monthly payments to Movant at the address listed above by the first day of each and every month, commencing with the March 1, 2017 payment, and it is further

C. ORDERED that in the event the Debtor fails to tender the sum due under paragraph A hereinabove or fails to make timely payments described in paragraph B hereinabove, and thereafter fails to comply with a Ten (10) day Notice to Cure, then upon the filing of an

Affirmation of Non-Compliance and submission and signature of an Ex-Parte Order, the automatic stay is vacated with respect to the mortgage held by Movant and terminated with respect to the Co-Debtor, Mark Ruta, to the extent necessary to allow Movant, its successors and/or assigns, to commence and/or continue mortgage foreclosure and eviction proceedings on the real property located at 15 Country Colony Road, Queensbury, NY 12804, and it is further,

D. ORDERED that in the event the Debtor fails to tender the sums due under paragraph A and/or the payments due pursuant to paragraph B hereinabove, and if three (3) notices to cure had previously been sent to Debtor, Co-Debtor, and Debtor's attorney pursuant to paragraph C hereinabove, (for three previous defaults under this order), then no further notices to cure shall be provided and the automatic stay will be vacated with respect to the mortgage held by Movant and terminated with respect to the Co-Debtor, Mark Ruta, upon filing of an Affirmation of Non-Compliance and submission and signature of an Ex-Parte Order.

CONSENTED AND AGREED TO BY:


Michael J. Toomey Esq.
Attorney for Debtor(s)

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EXHIBIT B

Roach & Lin, P.C.
Attorneys at Law
6901 Jericho Turnpike, Suite 240
Syosset, NY 11791

Telephone (516) 938-3100
Facsimile (516) 931-4403
www.roachlawfirm.com

December 10, 2019

VIA USPS MAIL AND EMAIL

Michael Toomey, Esq.
1 Southwestern Plaza
PO Box 2144
Glens Falls, NY 12801
Email: MichaelJToomeyEsq@nycap.rr.com

Teri L. Ruta
15 Country Colony Rod
Queensbury, NY 12804

RE: Teri L. Ruta
Case No. 16-11036-1-rel
Premises located at 15 Country Colony Road, Queensbury, NY 12804

NOTICE OF DEFAULT

Dear Ms. Ruta:

This firm represents Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust A ("Creditor"), who holds a first mortgage on the premises known as 15 Country Colony Road, Queensbury, New York 12804 (the "Premises").

On March 13, 2017, this Court entered an Order Conditionally Granting Creditor Relief from the Automatic Stay ("Conditional Order"). Please see copy of Conditional Order annexed hereto as **Exhibit "A"**. Pursuant to the terms of the Conditional Order, you were required to pay the total sum of \$9,989.04 in 6 monthly installments of \$1,664.84 commencing March 15, 2017 and ending on August 15, 2017. This sum represents post-petition mortgage arrears covering July 2016 through and including February 2017 in the sum of \$9563.04 and attorney's fees and costs in the sum of \$426.00 ("Mortgage Arrears"). In addition to paying the Mortgage Arrears, you were also required to make your regular post-petition mortgage payments to Creditor commencing March 2017.

As of today's date, after a detailed and thorough analysis of your loan, it appears that you have only paid the total sum of \$4,000.00 post-petition leaving a balance of

\$47,564.89 due and owing at this time. (Please note that the total sum due and owing on the attached ledger does not include the attorney's fees).

Although Creditor received the sum of \$11,019.20 on February 20, 2019 from the Chapter 13 Trustee, this sum represents payments you made to the Trustee for the Mortgage pending Loss Mitigation. These funds were applied to your pre-petition arrears. Please see attached spreadsheet for a detailed breakdown of arrears annexed hereto as **Exhibit "B"**.

Accordingly you are in default of the Conditional Order. Under the terms of the Conditional Order, you have ten (10) days to cure the default measured from the date of the Letter, which will also be emailed to your attorney. In the event you fail to cure the default within ten (10) days, then upon our filing of an Affirmation of Non-Compliance and submission and signature of an Ex Parte Order with the Court, the stay will be vacated with respect to the mortgage, thereby allowing Creditor, its successors, and/or assigns, to commence and/or continue mortgage foreclosure and eviction proceedings on the above-mentioned Premises.

Very truly yours,

/s/ Tracy Schreiber-Banks

Tracy Schreiber-Banks, Esq.

Encls.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

-----X
In Re:

Teri L Ruta,

Debtor.
-----X

STATE OF NEW YORK)

ss.:

COUNTY OF NASSAU)

AFFIDAVIT OF SERVICE

Chapter 13

Case No.: 16-11036-1-rel

Alicia McNamee, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides in the State of New York.

That on December 10, 2019 deponent served the annexed **NOTICE OF DEFAULT** on the following parties at the addresses designated by them for that purpose, by depositing a true copy of same enclosed in a post-paid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

Teri L Ruta
15 Country Colony Rd.
Queensbury, NY 12804

Michael J Toomey, Esq.
1 Southwestern Plaza
PO Box 2144
Glens Falls, NY 12801

Sworn to before me on this
10th day of December 2019


NOTARY PUBLIC


Alicia McNamee

MARY MARSH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MA6120260
Qualified in Nassau County
My Commission Expires December 20, 2020